

**CITY OF SAN DIEGO  
ETHICS COMMISSION**

**Office of the Executive Director**

**MEMORANDUM**

**DATE:** March 16, 2012

**TO:** Council President Tony Young and Members of the Committee on Rules, Open Government and Intergovernmental Relations

**FROM:** Stacey Fulhorst, Executive Director

**SUBJECT:** Update on *Thalheimer* Litigation and Possible Amendments to Campaign Laws

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On January 20, 2012, the United States District Court issued a ruling on the parties' cross motions for summary judgment in the *Thalheimer v. City of San Diego* litigation. The Court generally affirmed its previous rulings, except with regard to the City's contribution limit for political parties (discussed in greater detail below), as follows:

1. Candidates for elective City office are not prohibited from spending their own money prior to the 12-month pre-election fundraising period.
2. The 12-month pre-election fundraising period remains in effect for all contributions to City candidates from sources other than the candidate's personal funds.
3. The City's \$500 limit remains in place for individual contributions made directly to a City candidate.
4. Non-individual entities, other than political parties, are prohibited from contributing directly to a City candidate.
5. There are no limits or source prohibitions for contributions to committees making independent expenditures, i.e., expenditures that are not coordinated with a candidate. Individuals and non-individual entities (e.g., corporations, partnerships, sole proprietorships) may contribute unlimited amounts to committees making independent expenditures to support or oppose a City candidate.

With respect to contributions from political parties to City candidates, the Court struck down the City's \$1,000 limit and stated that a new limit may be adopted only if the City demonstrates that it has seriously considered the balance between the following: "(1) the need to allow individuals to participate in the political process by contributing to political parties that help elect candidates

with (2) the need to prevent the use of political parties to circumvent contribution limits that apply to individuals.”

Although the Court struck down the City’s \$1,000 contribution limit for political parties, it ruled that party contributions to candidates must comply with the City’s attribution requirements in order to prevent circumvention of the City’s individual contribution limits. Therefore, any political party that makes a contribution to a City candidate must demonstrate that it used only donations from individuals in amounts up to \$500 when making the contribution.

The deadline for the parties to appeal the recent District Court ruling was March 7, 2012. Because no appeals were filed by this deadline, the Court’s ruling is now final and the City may move forward with amending the Municipal Code to be consistent with the District Court’s ruling. In addition to the amendments required by *Thalheimer*, the Ethics Commission plans to consider other related changes to the City’s campaign laws. In particular, the Commission may propose the following amendments that directly relate to the *Thalheimer* ruling:

- a new limit for contributions from political parties to City candidates; and
- amendments to the attribution rules applicable to political party contributions, including one or more of the following: (1) changing the time frame for attribution disclosure (currently required within six months of the date of the contribution); (2) clarifying that once a donor’s contribution has been identified as a funding source for a contribution to a City candidate, that contribution may not be used for attribution purposes again; (3) requiring itemization of all individual contributions, regardless of amount; and (4) limiting the time frame for attribution (currently political parties may identify donations received decades ago as the funding source for a contribution made today).

In addition, the Commission plans to consider amendments to the City’s lobbying laws that would require lobbying firms and organization lobbyists to disclose campaign contributions and fundraising activities associated with committees primarily formed to support or oppose City candidates (because such committees may now accept unlimited contributions from any source). Although not related to the *Thalheimer* ruling, the Commission also plans to consider proposed amendments to the third pre-election filing required for City candidates in light of compliance concerns voiced by professional treasurers regarding the disclosure of accrued expenses.

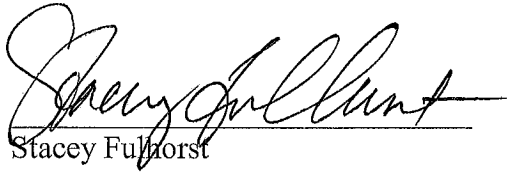
The Commission has also been advised that several individuals plan to ask the Commission to consider other changes to the City’s campaign laws (unrelated to the *Thalheimer* litigation). Accordingly, the Commission has invited the public to comment on such matters at its April 12, 2012, meeting; the Commission is, however, mindful that some suggestions may need to be deferred for Commission consideration at a later date. As you will recall, the City has historically implemented changes to its campaign laws on January 1 of odd number years to prevent the rules from changing in the midst of an election cycle. In order to allow time for Rules Committee consideration, Council adoption, and the requisite thirty-day waiting period,

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the Commission plans to finalize its package of proposed amendments no later than August of 2012.

A handwritten signature in black ink, appearing to read "Stacey Fulhorst", written over a horizontal line.

Stacey Fulhorst  
Executive Director